

FCC MAIL SECTION

Jul 23 10 51 AM 1999 Federal Communications Commission

FCC 99-171

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Amendment of Policies and Rules Concerning) CC Docket No. 94-158
 Operator Service Providers and Call Aggregators)

SECOND REPORT AND ORDER

Adopted: July 12, 1999; Released: July 19, 1999

By the Commission:

I. INTRODUCTION

1. In this *Second Report and Order*, we amend our rules governing operator service providers (OSPs)¹ and call aggregators² to specify that the consumer information that aggregators are required to post on or near public phones³ must be updated as soon as practicable, but no later than 30 days after an aggregator has changed the presubscribed OSP.⁴

¹ For purposes of the Commission's operator service rules, sections 64.703 through 64.707, "operator services" means:

any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (1) Automatic completion with billing to the telephone from which the call originated; or (2) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

47 C.F.R. § 64.708(g). "Provider of operator services" means "any common carrier that provides operator services or any other person determined by the Commission to be providing operator services." 47 C.F.R. § 64.708(i).

² An "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 C.F.R. § 64.708(b); also, 47 U.S.C. § 226(a)(2).

³ The term "public phones" refers here to payphones and phones at other aggregator locations.

⁴ Section 64.703(b)(1) of our rules requires aggregators to post on or near the telephone instrument, in plain view of consumers, the OSP's name, address and toll-free telephone number. 47 C.F.R. § 64.703(b)(1).

II. BACKGROUND

2. Interstate calls from payphones, hotels, hospitals, educational institutions and other aggregator locations are routed today to the OSP chosen by the premises or payphone owner, unless the caller dials an access code to reach a different carrier.⁵ OSPs pay commissions to payphone or premises owners on all non-access code calls from a public phone in exchange for being chosen by the premises owners as the "presubscribed" interexchange carrier (PIC) serving their phones. Some OSPs and their aggregator customers charge consumers high rates for operator services and related surcharges. Information about OSP rates at a particular payphone location enables customers to make informed choices regarding whether to use the OSP provider at that location or dial around to their preferred provider.

3. In response to concerns about OSP practices, Congress enacted the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA).⁶ That law directed the Commission to promulgate regulations to "protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls . . . [and to] ensure that consumers have the opportunity to make informed choices in making such calls."⁷ Among the regulations that we have issued pursuant to that mandate, and particularly section 226(c)(1)(A) of the Communications Act, is section 64.703 of the Commission's rules. That rule requires that, *inter alia*, each aggregator post on or near the telephone instrument, in plain view of consumers: (1) the name, address, and toll-free telephone number of the provider of operator services; (2) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; (3) in the case of a pay telephone, the local coin rate for the pay telephone location; and (4) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission, to which the consumer may direct complaints regarding

⁵ An "access code" is a sequence of numbers that, when dialed, connects the caller to the OSP associated with that sequence. See 47 U.S.C. § 226(a)(1); *Policies and Rules concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3251 n.1 (1992). 800 or 950 access code calls are toll-free for the caller, whereas 10-10XXX access code calls are charged to the originating line. Under section 226 of the Communications Act of 1934, as amended, every aggregator must "ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use '800' and '950' access code numbers to obtain access to the provider of operator services desired by the consumer." 47 U.S.C. § 226(c)(1)(B).

⁶ Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

⁷ See 47 U.S.C. § 226(d)(1).

operator services.⁸ Neither the statute nor the Commission's rules specify when this notice must be changed to reflect a change in the PIC or OSP for a telephone location.⁹

4. The Commission initially requested comment on whether a specific time limit for updating the consumer information required to be posted on or nearby aggregator telephones is necessary or desirable in a Notice of Inquiry in this proceeding.¹⁰ Subsequently, based on the record then before it, the Commission found that delay existed in updating required postings of consumer information. The Commission, therefore, requested comment on a proposed rule, favored by the majority of commenters, which would require such postings to be updated within 30 days after a payphone owner is notified that a PIC change has occurred.¹¹ The Commission believed this time period afforded payphone owners "enough time to make updates during regularly scheduled maintenance visits while providing reasonably current information to users in light of branding requirements."¹² The Commission considered proposals to use the date of the next regularly scheduled maintenance for the updating deadline but did not find adequate record evidence to support such proposals.¹³ Eight parties commented on this issue.¹⁴

III. DISCUSSION

5. The Commission has adopted, *inter alia*, consumer information disclosure requirements to advance consumers' statutory right to know the presubscribed carrier for all

⁸ 47 C.F.R. § 64.703(b). The Commission also adopted Section 64.703(e), which implemented, in part, section 226(b)(1)(D) of the Communications Act. That statutory provision requires every OSP to ensure, by contract or tariff, that each aggregator for which it is the presubscribed OSP is in compliance with the information posting requirements that aggregators must provide to consumers under TOCSIA and the Commission's rules.

⁹ The terms "OSP" and "PIC" are used interchangeably herein.

¹⁰ *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, 10 FCC Rcd 1533, 1535 (1995).

¹¹ Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 4532, 4555 (1996) (hereinafter *Further Notice of Proposed Rule Making*). Eleven of the sixteen parties that initially commented generally supported establishing a time limit for updating consumer information posted on aggregator telephones after the presubscribed OSP has changed. *Id.* at 4549.

¹² *Id.*

¹³ The Commission also was not persuaded that an allegation of "slamming" (*i.e.*, the submission of an unauthorized PIC change by an OSP) should be an automatic defense to a violation of the proposed requirement and stated that it would consider such arguments on a case-by-case basis if it adopted the proposed time limit. *Id.*

¹⁴ The parties commenting are listed in Appendix B.

public telephones.¹⁵ We agree with AT&T's assertion that such "carrier information is critical for the presubscription system, which is designed to effectuate consumer choice, to function efficiently at such telephones."¹⁶ The accuracy of information required to be disclosed to consumers is critical to informed consumer choice and to further competition in rates that consumers are charged in this segment of the interstate market.¹⁷

6. While section 226 requires aggregators to post, *inter alia*, the name, address and toll-free number of the OSP, neither the statute nor the Commission's rules specify when the required information must be updated by aggregators when a PIC-change occurs at an aggregator site. The majority of those commenting earlier in this proceeding approved of, or did not oppose, a proposed 30-day deadline. Several of those filing in the last round of comments, however, seek greater flexibility, particularly with regard to payphones in rural and limited access locations.¹⁸ Inaccurate disclosure to consumers of the identity of the presubscribed OSP at an aggregator location results when notice of a change of such identity is not timely provided. This is inherently deceptive or, at best, misleading. Accordingly, we reject suggestions for a longer deadline or for an open-ended exception. Instead, we will require aggregators to update consumer information postings as soon as reasonably practicable but no later than 30 days from a PIC-change.

7. We have found that delays exist in updating required postings at aggregator sites.¹⁹ Although AT&T continues to believe that 7 to 15 days, which it previously urged, is more than sufficient time to require that signs on public telephones be changed, AT&T does not oppose the proposed rule if amended to require aggregators to make the necessary posting update within 30 days of notification of a PIC-change, or at the next scheduled servicing of the phone, whichever is earlier.²⁰ We are not persuaded that we should adopt such a rule. As U S WEST notes, if the next servicing of the payphone or payphones in question had been scheduled for the following day, it could be difficult, if not impossible, for the payphone owner or aggregator to ensure that consumer information is updated that quickly.²¹

¹⁵ AT&T Comments at 1.

¹⁶ *Id.*

¹⁷ Operator services from aggregator locations have been characterized by high rates and related surcharges billed to consumers by some OSPs and their aggregator customers. See *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd 6122, 6127-28, para. 7 (1998).

¹⁸ See, e.g., BellSouth Comments at 3.

¹⁹ See para. 4, *supra*.

²⁰ AT&T Comments at 1-2.

²¹ U S WEST Reply Comments at 3-4.

8. The Competitive Telecommunications Association (CompTel) continues to maintain that "consumer information posted on a public telephone should be updated as soon as reasonably practicable after a PIC change occurs."²² CompTel states that the inability or failure of some aggregators to update this information promptly frustrates OSPs because end users frequently blame the OSP, not the phone owner, for incorrect information posted at the telephone.²³ CompTel states that incorrect consumer information is the source of many complaints at both the Commission and state public utility commissions and that, particularly at local exchange carrier (LEC) payphones, OSPs have routinely been rebuked in their efforts to change LEC procedures to ensure the posted information is accurate and timely updated.²⁴ CompTel asserts that the Commission should prescribe a date certain, or maximum time, by which aggregators must update posted information.²⁵ We agree. The rule we adopt requires aggregator postings to be updated promptly and specifies an outer limit within which all such postings must be updated.

9. We do not concur, however, with CompTel's further suggestion that our rules should place affirmative obligations only on aggregators, and not on OSPs, with regard to the disclosure of information to consumers that is required of aggregators. CompTel submits that an OSP should be considered to have fulfilled its duty under section 64.703(e) of the Commission's rules²⁶ if "(1) it does not knowingly allow aggregators to ignore their obligations under section 64.703(b), (2) it promptly notifies the aggregator of a PIC change, and (3) it aurally brands each call placed from the aggregator telephone."²⁷ As noted above, under TOCSIA, OSPs have an affirmative obligation "to ensure, by contract or tariff," that each aggregator for which they are the presubscribed OSP is in compliance with, among other things, the posting requirements that Congress has mandated.²⁸ Accordingly, we expect OSPs to take appropriate measures, if and when necessary, to enforce the conditions of service specified in their tariffs and/or contracts with

²² CompTel Comments at 1.

²³ *Id.*

²⁴ *Id.* at 1-2.

²⁵ *Id.* at 2.

²⁶ Section 64.703(e), implements, in part, section 226(b)(1)(D) of the Communications Act, which provides that every OSP "shall, at a minimum . . . ensure, by contract or tariff" that each aggregator for which it is the presubscribed OSP is in compliance with the information posting requirements that aggregators must provide to consumers under TOCSIA and the Commission's rules.

²⁷ CompTel Comments at 3.

²⁸ 47 U.S.C. § 226(b)(1)(D).

their aggregator customers, including those relating to the accurate posting of consumer information.²⁹

10. We also disagree with the assertion of Southwestern Bell Telephone Company (SWBT) that current market forces in this particular submarket are sufficient, in and of themselves, to "ensure that consumers are sufficiently advised of the interexchange carrier to which a payphone is subscribed."³⁰ Similarly, we disagree with its assertion, and those of BellSouth Telecommunications, Inc. (BellSouth) and GTE Service Corporation and its affiliated domestic telephone operating companies (GTE), that our 30-day deadline constitutes unnecessary micro-management and regulatory interference with business management in this particular submarket.³¹ We continue to receive complaints from consumers indicating that market forces alone have not resulted in the provision of information consumers need to avoid rate gouging by certain aggregators' presubscribed operator services providers.³² The essence of the statutory mandate in section 226 is that consumers must have ready access to information concerning rates and service providers, which will make it more likely that competition will ensure that rates are maintained at reasonable levels in this area. In order to provide flexibility, however, we will allow an aggregator to meet our 30-day outer limit rule, where its maintenance technicians would not otherwise visit the particular payphone location within 30 days, by having its coin collection or other agent affix a temporary sticker to the payphone. Such temporary sticker must be replaced with permanent signage during the next regularly scheduled maintenance visit.

11. Based on the entire record before us in this proceeding, we conclude that we should amend our rules to clarify and specify when consumer information disclosures must be updated following a PIC change. We conclude that the required postings should be updated as soon as practicable, such as during the first scheduled collection or maintenance visit following a PIC change, but not later than 30 days after the PIC change. The fact that a payphone may be located in a rural area is insufficient, in and of itself, to excuse an aggregator's failure to update information that could mislead consumers to place calls that they otherwise might not have made, or for which they would have chosen to dial-around the presubscribed OSP. A temporary sticker could be mailed out to the premise owner to affix to a payphone at a remote location. To allow more than a 30-day deadline for an aggregator to post the identity of the presubscribed OSP at any given site would frustrate the statutory goal that consumers are entitled to know who will

²⁹ TOCSIA's obligations are not applicable to payphone providers if they are neither an aggregator nor an OSP. Nevertheless, in order to protect their good will and name, such providers may emphasize to those buying or leasing their payphones that federal law requires certain consumer information to be posted on all payphones at aggregator locations.

³⁰ SWBT Comments at 3.

³¹ See SWBT Comments at 2-3, BellSouth Comments at 2, GTE Reply Comments at 4.

³² See, e.g., letter from Margaret Bennett and John Bennett to the Honorable Connie Mack and the Honorable Robert Graham (Dec. 1, 1998) IC 99-03249; letter from Duran Phillips to the Consumer Protection Branch, Enforcement Division, Common Carrier Bureau (Jan. 13, 1999) IC 99-04544.

carry and bill for any long-distance non-access code call that they might make from that site. We reject an open-ended outer limit as U S WEST and GTE suggest.³³ We also do not concur in U S WEST's recommendation that the time within which an aggregator must update its consumer information posting should not begin to run until a PIC-change order has been processed and verified. We disagree with Ameritech's view that, if we impose a rule imposing a time limit for signage changes, a general guideline of 30 days, and an outer limit of 60 days for changes in payphones at remote or low-volume locations, should apply.³⁴ We conclude that 30 days is the maximum period, consistent with our obligation under TOCSIA to protect consumers and ensure their opportunity to make informed choices when placing calls from public phones, that should be allowed to accommodate largely unsupported economic hardship claims. We find nothing persuasive in the record that any burden to aggregators, OSPs and payphone providers would outweigh the benefits that will accrue to consumers.

IV. PROCEDURAL MATTERS

A. Final Paperwork Reduction Act Analysis

12. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. sections 3501 et. seq., the *Further Notice of Proposed Rule Making* invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained in the *Further Notice of Proposed Rule Making*.³⁵ No comments were submitted in response to the Commission's request for comment on the information collections contained in the *Further Notice of Proposed Rule Making*. OMB initially approved the proposed requirements.³⁶ In this *Second Report and Order*, we have adopted information collection requirements somewhat modified from those proposed in the *Further Notice of Proposed Rule Making* and which OMB will review before they become effective.

B. Final Regulatory Flexibility Act Certification

13. The Final Regulatory Act Certification is contained in Appendix C.

³³ GTE Reply Comments at 4. See AT&T Comments at 2.

³⁴ Ameritech Comments at 2. Ameritech is comprised of Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

³⁵ *Further Notice of Proposed Rule Making*, 11 FCC Rcd at 4555.

³⁶ See Notice of Office of Management and Budget Action (NOA) dated September 5, 1995.

V. CONCLUSION

14. For the reasons discussed above, we conclude that the Commission's rules, in further implementation of TOCSIA, should be amended to clarify that an aggregator must update the posted consumer information as soon as practical and no later than 30 days after the presubscribed OSP has been changed.³⁷

VI. ORDERING CLAUSES

15. IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 226 of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 154(j), 226, that section 64.703 of the Commission's Rules and Regulations, 47 C.F.R. § 64.703, IS AMENDED, as set forth in Appendix A. Section 64.703 contains a collection of information. This collection of information is contingent upon approval by the Office of Management and Budget (OMB).

16. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

17. IT IS FURTHER ORDERED that the Secretary shall cause a summary of this Order to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas
Secretary 

³⁷

See Appendix A.

APPENDIX A

Amended Rule

PART 64 - MISCELLANEOUS RULES
RELATING TO COMMON CARRIERS

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs 201, 218, 226, 228, and 254(k) unless otherwise noted.

2. Part 64, Subpart G, is amended as follows:

section 64.703 is amended by substituting the following for subsection (c):

(c) Updating of Postings.

The postings required by this section shall be updated as soon as practicable following any change of the carrier presubscribed to provide interstate service at an aggregator location, but no later than 30 days following such change. This requirement may be satisfied by applying to a payphone a temporary sticker displaying the required posting information, provided that any such temporary sticker shall be replaced with permanent signage during the next regularly scheduled maintenance visit.

APPENDIX B

Parties Filing Comments¹

Ameritech

AT&T Corp.

BellSouth Telecommunications, Inc. (BellSouth)

The Competitive Telecommunications Association (CompTel)

Southwestern Bell Telephone Company (SWBT)

Parties Filing Reply Comments

The American Public Communications Council, Inc. (APCC)

GTE Service Corporation and affiliated domestic telephone operating companies (GTE)

U S WEST Communications, Inc. (U S WEST)

¹ Comments and Reply Comments were filed on March 26 and April 5, 1996, respectively.

APPENDIX C**Final Regulatory Flexibility Certification**

1. A Regulatory Flexibility Act (RFA)¹ certification was incorporated in the *Further Notice of Proposed Rulemaking* in this proceeding.² The RFA requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."³ We again certify that this proceeding will not have such an impact on small entities. As described more fully in the *Second Report and Order*, aggregators currently are required by statute and Commission rule to post certain consumer information on or near public phones, and the present amended rule merely specifies the time within which an aggregator must do so, *i.e.*, as soon as practicable, but no later than 30 days after an aggregator has changed the presubscribed long-distance carrier. Nonetheless, we have voluntarily written this present analysis to create a fuller public record in this proceeding.

A. Need for, and Objectives of, the *Second Report and Order*

2. The accuracy of information required to be disclosed to consumers is critical to informed consumer choice and to further competition in rates that consumers are charged when making calls from payphones and other call aggregator locations. The adopted rule amendment is needed so that consumers are not misled but, rather, are timely notified of the identity of the presubscribed carrier for operator-assisted interstate calls in this segment of the telecommunications market. Inaccurate disclosure to consumers of the identity of the presubscribed operator services provider is inherently deceptive or, at best, misleading. The timely posting of such information will protect callers who want to avoid high carrier charges and aggregator surcharges by dialing around the presubscribed carrier and using a long-distance carrier of their choice. This, in turn, will further greater price competition in this segment of the telecommunications market, in which many aggregators have heretofore taken advantage of their market power to the detriment of the ultimate user or consumers. The rule amendment will also provide greater certainty to the industry, particularly aggregators and providers of interstate operator services, as to their obligations under the Commission's rules in implementation of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) (codified at 47 U.S.C. § 226).

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 4532, 4555 (1996) ("*Further Notice of Proposed Rulemaking*"). The NPRM and certification were adopted prior to SBREFA (*see generally supra* note 1).

³ 5 U.S.C. § 605(b).

B. Summary of Significant Issues Raised by Public Comments

3. No comments were submitted specifically in response to the Commission's initial certification under the RFA. Five parties filed comments on the Commission's proposal, and three others filed reply comments. Some commenters sought greater flexibility, particularly with regard to payphones in rural and limited access locations. Some sought a longer deadline, or no deadline. One commenter sought a shorter deadline. We have considered the potential effect of our rule amendment as described below.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷ Nationwide, there are approximately 4.44 million small business firms, according to SBA reporting data.⁸ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁰ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁷ Small Business Act, 15 U.S.C. § 632 (1996).

⁸ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁹ 5 U.S.C. § 601(4).

¹⁰ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

districts, with a population of less than 50,000."¹¹ As of 1992, there were approximately 85,006 such jurisdictions in the United States.¹² This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.¹³ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

5. Payphone providers and other aggregators include not only large entities such as telephone companies, hotels, hospitals, educational institutions, and airports, but many small entities, including family businesses such as "mom-and-pop" gas stations, grocery stores, and restaurants. Aggregators are not currently required to obtain any authorizations from the Commission or to file any reports with the Commission. Given the great variety of the nature of the entities that might choose to be providers and especially aggregators, we have described in detail, *supra*, the overall national numbers of small entities potentially affected by this action (albeit not affected significantly by the action). We will also highlight two specific categories of entities, below.

6. *Operator Service Providers.* Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under section 226(b)(1)(D) of the Communications Act of 1934, as amended, 47 U.S.C. § 226, to ensure that each aggregator for which such provider is the presubscribed OSP is in compliance with the posting required of such aggregator. OSPs also are required under section 226 to file and maintain informational tariffs at the Commission. The number of such tariffs on file appears to be the most reliable source of information of which we are aware regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this *Second Report and Order*. As of July 12, 1999, approximately 760 carriers had informational tariffs on file at the Commission. The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.¹⁴ Although it seems certain that some of these entities are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 760 small entity OSPs that may be affected by the decisions and rules adopted in this *Second Report and Order*.

¹¹ 5 U.S.C. § 601(5).

¹² U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

¹³ *Id.*

¹⁴ 13 C.F.R. § 121.201, Standard Industrial Code (SIC) Code 4813.

7. *Pay Telephone Providers.* The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes in its report, *Carrier Locator: Interstate Service Providers*, which includes data collected in conjunction with the Telecommunications Relay Service (TRS).¹⁵ According to data in the most recent report, there are 509 pay telephone providers.¹⁶ Using the SBA definition of small entities, *supra*, we expect that some of these entities are not independently owned and operated, or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of pay telephone providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 509 such small entity providers that may be affected by the rules adopted in this *Second Report and Order*.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. Aggregators currently are required by statute (47 U.S.C. § 226(c)(1)(A)) and Commission rule (47 C.F.R. § 64.64.703(b)(1)) to post certain consumer information on or near public phones. The amended rule specifies the time within which an aggregator must do so, *i.e.*, as soon as practicable, but no later than 30 days after an aggregator has changed the presubscribed long-distance carrier.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. We considered and rejected an AT&T proposal that aggregators be required to make the necessary posting update within 30 days of notification of a change of the presubscribed interexchange carrier, or at the next scheduled servicing of the phone, whichever is earlier. We found that if the next servicing of the payphones in question had been scheduled for the following day, it might not be possible for the payphone owner or aggregator to ensure the update that quickly. We also considered and rejected suggestions for a deadline longer than 30 days, and for an open-ended exception with regard to payphones in rural and limited access locations. We concluded that inaccurate disclosure to consumers of the identity of the presubscribed operator services provider is inherently deceptive or, at best, misleading. To provide flexibility, however, our amended rule allows an aggregator to meet the 30-day outer limit deadline, when its maintenance technicians would not otherwise visit the particular payphone location within 30 days, by having its coin collection or other agent affix a temporary sticker to the payphone. We have rejected suggestions that promulgating a 30-day deadline for updating statutory-mandated posting of consumer information would constitute unnecessary micro-managing and that current market forces in this particular submarket are

¹⁵ FCC, Common Carrier Bureau, Industry Analysis Division, *Carrier Locator: Interstate Service Providers*, Figure 1 (Jan. 1999).

¹⁶ *Id.*

sufficient to ensure that consumers are sufficiently advised of the interexchange carrier to which a payphone is subscribed. We rejected a further suggestion that the Commission should place affirmative obligations only on aggregators, and not on operator service providers, with regard to the disclosure of information to consumers that is required of aggregators. Under TOCSIA, operator service providers must ensure by contract or tariff that each aggregator for which they are the presubscribed carrier is complying with posting the consumer information that Congress there mandated.

10. We have not identified any alternatives that would have lessened the economic impact on small entities while remaining consistent with the statutory objectives to "protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls . . . [and to] ensure that consumers have the opportunity to make informed choices in making such calls." See 47 U.S.C. § 226(d)(1). We have concluded that 30 days is the maximum period, consistent with our obligation under TOCSIA to protect consumers and ensure their opportunity to make informed choices when placing calls from public phones, that should be allowed to accommodate largely unsupported economic hardship claims. We have found nothing persuasive in the record that any burden to aggregators, OSPs and payphone providers, including small entities, would outweigh the benefits that will accrue to consumers.

11. The Commission will send a copy of the *Second Report and Order*, including this Certification, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Report and Order*, including the Certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order*, and Certification will also be published in the Federal Register. See 5 U.S.C. § 605(b).